

1
2
3
4
5
6
7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 YVETTE FELARCA, ET AL., No. C-11-05719 DMR
12 Plaintiff(s), ORDER RE: JOINT
13 v. LETTER [DOCKET]
14 ROBERT J. BIRGENEAU, ET AL.,

17 The court has reviewed the arguments between Plaintiffs and the UC Defendants regarding
18 the deliberative process privilege at pages 4-7 of the December 18, 2015 joint discovery letter.
19 [Docket No. 345.] Both sides failed to provide adequate information for the court to be able to
20 analyze the issues.

21 The parties are ordered immediately to engage in further telephonic or face-to-face meet and
22 confer discussions regarding the documents at issue, bearing in mind the content of this order. If the
23 parties cannot resolve the dispute, they must file a further joint letter by **January 30, 2015**. The
24 letter shall not exceed 8 pages. Defendants shall attach a copy of the privilege log describing the
25 disputed documents. The privilege log must provide adequate information for the viewer to
26 understand the subject matter (for example, is the document relevant to the November 9, 2011
27 protest? To a different protest?), as well as whether the document constitutes a communication
28 among CMET members as opposed to other people. If Plaintiffs assert that they are entitled to

United States District Court

For the Northern District of California

1 documents that do not relate to the November 9, 2011 protest or do not involve CMET member
2 communications, Plaintiffs must articulate the relevance of those documents. Defendants must
3 establish that each document asserted to be privileged is both predecisional (identifying the final
4 decision as well as its date), and deliberative. Plaintiffs shall make specific arguments regarding any
5 challenged document (i.e., explain why that document is not predecisional and/or deliberative). The
6 parties shall also address the factors that the court considers in determining whether the qualified
7 privilege should be overcome. *See, e.g., FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1161
8 (9th Cir. 1984).

9 The hearing previously scheduled for January 29, 2015 will be held as scheduled. The court
10 will address all disputes set forth in Docket No. 345 other than those relating to the deliberative
11 process privilege.

12
13
14 IT IS SO ORDERED.
15
16 Dated: January 23, 2015
17
18
19
20
21
22
23
24
25
26
27
28

